

**United States Department of Labor  
Employees' Compensation Appeals Board**

A.M., Appellant	)	
	)	
and	)	Docket No. 19-1269
	)	Issued: December 4, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Nashville, TN, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On May 20, 2019 appellant filed a timely appeal from a March 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a left shoulder injury in the performance of duty, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On January 7, 2019 appellant, then a 36-year-old sales associate, filed an occupational disease claim (Form CA-2) alleging that she sustained a strained left shoulder due to factors of her federal employment. She indicated that she first became aware of her condition and its relation to her federal employment on December 31, 2018. In an attached statement, appellant explained that as of December 26, 2018 she had been assigned to do “hot case letters and flats,” which involved more repetitive motions. She noted that her left shoulder began to hurt on December 31, 2018 and that she originally notified a supervisor of her pain on January 3, 2019. Appellant attempted to rest her shoulder that weekend, however, upon returning to work on January 7, 2019, the pain persisted. She stopped work that day.

In a January 7, 2019 medical note, Dr. John Watson, Board-certified in emergency medicine, indicated that appellant could return to work after her follow-up appointment with orthopedics.

In a development letter dated January 22, 2019, OWCP advised appellant that it required additional factual and medical evidence to establish her claim. It attached a questionnaire, requesting that she provide a detailed description of the employment factors she believed had contributed to her left shoulder condition, including a description of the exact medical condition she was claiming, relevant dates, and required duties. OWCP also requested that appellant’s attending physician provide a comprehensive narrative medical report. It afforded her 30 days to submit the necessary evidence.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant’s occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s statements, and a copy of her position description and physical requirements of her position. It afforded the employing establishment 30 days to respond.

In a January 22, 2019 medical report, Dr. Peter Lund, a Board-certified orthopedic surgeon, evaluated appellant for sharp left shoulder pain and spasms, which she attributed to heavy lifting and frequent overhead motions at work. He noted that appellant had previously experienced similar pain in her shoulder at work several months ago, but it gradually went away overtime. On examination, Dr. Lund found no evidence of anterior, posterior or inferior instability. In a separate note of even date, he opined that appellant would need to remain out of work for three weeks until after her follow-up appointment.

In a February 22, 2019 medical report, Dr. Lund again noted appellant’s history of pain related to repetitive and shoulder-intensive activities, including throwing packages upwards and sorting mail. He also noted a shoulder injury that occurred at work one year before. The results of a January 22, 2019 x-ray examination of appellant’s left shoulder revealed no evidence of pathologic lesions, acute fractures, or dislocations. Dr. Lund assessed overuse left shoulder discomfort that arose from her work activities and indicated that additional diagnostic testing would be ordered if she did not improve with physical therapy and time away from work.

By decision dated March 25, 2019, OWCP denied appellant's claim finding that the evidence of record failed to establish that the occupational exposure occurred as alleged as she had not responded to the questionnaire provided with the January 22, 2019 development letter. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a left shoulder injury in the performance of duty, as alleged.

The Board finds that appellant has not established the factual component of her claim as she failed to sufficiently describe the circumstances surrounding the occupational factors which she believed caused or contributed to her alleged left shoulder condition. To establish a claim for

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<sup>3</sup> See *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

compensation in an occupational disease claim, an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition.<sup>8</sup>

In her statement dated January 7, 2019, appellant provided a vague description of the occupational factors she believed had caused her left shoulder condition, indicating that, at the time she began having pain in her left shoulder, she was performing “more of a repetitive motion job” working with “hot case letters and flats,” which was a task that she did not usually perform. However, this statement did not describe the specific employment factors she believed caused or contributed to her condition.<sup>9</sup>

In a development letter dated January 22, 2019, OWCP requested that appellant provide detailed information concerning the occupational factors she believed contributed to her alleged condition and respond to its questionnaire. However, appellant failed to respond or otherwise provide a detailed narrative statement describing the employment factors which she believed contributed to her condition.<sup>10</sup>

As appellant has not described the employment factors alleged to have caused her injury, the Board finds that she has not met her burden of proof to establish an injury in the performance of duty, as alleged. As such, the medical evidence need not be addressed.<sup>11</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board’s merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left shoulder injury in the performance of duty, as alleged.<sup>12</sup>

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<sup>8</sup> *D.M.*, Docket No. 18-0335 (issued June 18, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>11</sup> *See E.V.*, *supra* note 3; *see V.F.*, 58 ECAB 321, 327 (2007); *see also Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

<sup>12</sup> The Board notes that appellant has a prior claim for a March 9, 2018 left shoulder injury under OWCP File No. xxxxxx097. Upon return of the case record, OWCP should consider combining that claim with the present claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board